

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SALTIRE INDUSTRIAL, INC.,

Case No. 04-15389 (BRL)

Debtor.

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STIPULATION AND ORDER RELATING TO CLAIMS OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WHEREAS, on August 17, 2004 ("Petition Date"), a voluntary petition for reorganization ("Petition") under Chapter 11 of Title 11, United States Code, 11 U.S.C. § 101, et seq.

("Bankruptcy Code"), was filed on behalf of the Debtor; and

WHEREAS, the Debtor continues to operate as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code; and

WHEREAS, the United States Environmental Protection Agency ("EPA") filed its Proof of Claim on or about February 11, 2005, asserting claims against the Debtor under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 ("CERCLA") (the "EPA Proof of Claim"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Scovill Industrial Landfill Superfund Site in Waterbury, Connecticut (the "Scovill Industrial Landfill

Superfund Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Solvents Recovery Service of New England Superfund Site in Southington, Connecticut (the "Solvents Recovery Superfund Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Caldwell Trucking Superfund Site in Fairfield, New Jersey (the "Caldwell Trucking Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Arrowhead Plating Superfund Site in Montross, Virginia (the "Arrowhead Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Sand, Gravel, and Stone Superfund Site in Elkton, Maryland (the "Maryland Sand Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Dickson County Landfill State Lead Superfund Site in Dickson, Tennessee (the "Dickson Superfund Site"); and

WHEREAS, by Notice dated December 28, 2005, the Debtor stated its intention to abandon certain properties related to the Scovill-Schrader facility ("the Dickson Parcels") pursuant to 11 U.S.C. § 554; and

WHEREAS, the EPA would object to abandonment of the Dickson

Parcels in the absence of the resolution of the EPA Proof of Claim; and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Fultz Landfill Superfund Site in Byesville, Ohio (the "Fultz Site"); and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from the Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Puente Valley Site"); and

WHEREAS, by motion dated April 11, 2005, the United States moved for a declaration that the automatic stay did not preclude entry of the Consent Decree filed in U.S. v. Acorn Engineering et al., docketed as Civil Action No. 03-5470-ABC (FMOx) (CDCA) (the "Acorn Engineering Consent Decree"), which was denied by Order of the Court dated May 3, 2005, as set forth in the Court's Memorandum Endorsement And Extract of Bench Ruling Of May 3, 2005 (the "May 3, 2005 Order"); and

WHEREAS, by motion dated May 10, 2005, the United States moved for reconsideration of the May 3, 2005 Order, which was denied by Order of the Court dated June 3, 2005, as set forth in the Court's Order Denying Motion Pursuant To Fed. R. Civ. P. 52 And 59 (the "June 3, 2005 Order"); and

WHEREAS, the appeal by the EPA from those Orders was

docketed as 05 Civ. 7278 (GBD), and is currently pending in the United States District Court for the Southern District of New York; and

WHEREAS, the EPA Proof of Claim asserted claims against the Debtor arising from its RCRA Compliance Obligations relating to the Scovill-Schrader Facility in Dickson, Tennessee (the "Scovill-Schrader Facility");

NOW, THEREFORE, it is hereby stipulated and agreed, by and between counsel for the Debtor and the Government, as follows:

1. Solvents Recovery Service of New England Superfund Site in Southington, Connecticut: With respect to the Solvents Recovery Superfund Site, the EPA shall have an Allowed Unsecured Claim in the amount of \$170,000 to be treated as a Class 3 Claim in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$170,000 as to this site.

2. Caldwell Trucking Superfund Site in Fairfield, New Jersey: The Debtor has entered into a separate settlement agreement with the Caldwell Trucking PRP Group (the "PRP Group"). Provided that all funds paid by the Debtor to the PRP Group are to be utilized for environmental remediation, the United States agrees to withdraw the EPA Claim on account of

such agreement. The United States reserves its right to object to any agreement between the Debtor and the PRP Group that does not comply with these terms.

3. Arrowhead Plating Superfund Site in Montross, Virginia: With respect to the Arrowhead Site, the EPA shall have an Allowed Unsecured Claim in the amount of \$717,636.12 to be treated as a Class 3 Claim in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$717,636.12 as to this site.

4. Sand, Gravel, and Stone Superfund Site in Elkton, Maryland: With respect to the Maryland Sand Site, the PRP Group responsible for such site shall have an Allowed Unsecured Claim in the amount of \$44,000, and the EPA shall have an Allowed Unsecured Claim in the amount of \$2,500, to be treated as Class 3 Claims in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$46,500 as to this site.

5. Dickson County Landfill State Lead Superfund Site in Dickson, Tennessee: With respect to the Dickson Superfund Site, the EPA shall have an Allowed Unsecured Claim in the amount of \$78,000 to be treated as a Class 3 Claim in accordance with the

terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$78,000 as to this site.

6. Fultz Landfill Superfund Site in Byesville, Ohio: With respect to the Fultz Site, the EPA shall have an Allowed Unsecured Claim in the amount of \$150,000 to be treated as a Class 3 Claim in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$150,000 as to this site.

7. Puente Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California: With respect to the Puente Valley Site, the EPA shall have an Allowed Unsecured Claim in the amount of \$1.5 million to be treated as a Class 3 Claim in accordance with the terms of the Debtor's Plan of Liquidation. The Debtor further agrees, upon approval of this Stipulation by the Bankruptcy Court, that the sum of \$500,000 plus accrued interest earned thereon from the Escrow Account established pursuant to the Acorn Engineering Consent Decree, Paragraph 4 (the "\$500,000 Escrow"), shall be released to the United States in accordance with the terms of paragraph 4 of that Consent Decree. Moreover, with regard to the Acorn Engineering Consent Decree:

- (a) Debtor and the Creditors' Committee hereby withdraw any objection to entry of that Consent Decree as filed with this Court on April 28, 2005;
- (b) Debtor's and the Creditors' Committee's objection to entry of that Consent Decree having been withdrawn, the Court hereby withdraws as moot its May 3, 2005 Order and the June 3, 2005 Order; and
- (c) No later than fifteen (15) business days following payment to the United States of the amount of the \$500,000 Escrow in accordance with the terms of Paragraph 4 of the Acorn Engineering Consent Decree, the United States shall withdraw its appeal of the May 3, 2005 Order and June 3, 2005 Order docketed as 05 Civ. 7278 (GBD), which is currently pending in the United States District Court for the Southern District of New York.

The United States will be deemed to have withdrawn any EPA claim in an amount in excess of the \$1.5 million Class 3 Claim and the \$500,000 Escrow for this Site.

8. RCRA Compliance Obligations Relating to the Scovill-Schrader Facility in Dickson, Tennessee: With respect to the Scovill-Schrader site, the EPA shall have an Allowed Class 3 Unsecured Claim in the amount of \$3,110,000, and an Allowed

Administrative Claim in the amount of \$307,000 to be treated in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of the Allowed Claims as to this site. The EPA does not object to abandonment of the Dickson Parcels, in consideration of Debtor's agreement to the following:

- (a) The EPA and any agency of the State of Tennessee acting in cooperation or coordination with the EPA (collectively, the "EPA") are hereby authorized to enter and have continued access to the Dickson Parcels for all the following purposes: (i) the taking of any soil, groundwater, and air samples determined to be necessary by the EPA; (ii) actions related to, and including, the investigation of surface and subsurface contamination; and (iii) any other action consistent with the response authority of the EPA to abate, address, investigate, or otherwise respond to the release or threat of release of hazardous substances at or from the Dickson Parcels described herein, pursuant to CERCLA, 42 U.S.C. §§ 9601 et seq., or any other applicable statute.
- (b) The abandonment of the Dickson Parcels shall be without prejudice to the EPA's right, if any, to seek to perfect a lien for its costs with respect to the Dickson Parcels. See 42 U.S.C. § 9607(l).

9. Scovill Industrial Landfill Superfund Site in Waterbury, Connecticut: With respect to the Waterbury Site, the EPA shall have an Allowed Unsecured Claim in the amount of

\$5,300,000 to be treated as a Class 3 Claim in accordance with the terms of the Debtor's Plan of Liquidation, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$5,300,000 as to this site.

10. Distributions received by EPA will either be: (a) deposited in site-specific special accounts within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the particular site for which a claim has been allowed, or be transferred by EPA to the EPA Hazardous Substance Superfund; or (b) be deposited into the EPA Hazardous Substance Superfund.

11. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from the Debtor under this Settlement Agreement and the Debtor's Plan of Liquidation for EPA's allowed claims, and not the total amount of the allowed claim, shall be credited by EPA to its account for the respective Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the respective Site by the amount of the credit.

12. The Debtor waives and agrees not to assert any claims or causes of action against the United States with respect to any of the Sites listed in this Stipulation and Order, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

13. The United States reserves its rights as to any insurance proceeds relating to environmental liabilities that may be received by the Debtor in connection with the Sites described herein.

14. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

15. Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will also be lodged with the Bankruptcy Court and submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

16. This Stipulation and Order shall not be binding upon the Debtor or the Government unless it is approved by the Bankruptcy Court. If the Bankruptcy Court declines to approve this Stipulation and Order, then it shall be null, void, and of no force and effect, and the Government shall be entitled to raise any objection to the Plan at or following confirmation.

Dated: March 6, 2006
New York, New York

FOR THE DEBTOR:

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Dated: March 8, 2006
New York, New York

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Dated: March 7, 2006
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Dated: March 6, 2006
Washington, D.C.

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Washington, D.C. 20004

SO ORDERED:

HON. BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

DATED: New York, New York
March 22, 2006